

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GEORGE DALIE,	)	
	)	Civil Action No. 2: 16-cv-1448
Plaintiff,	)	
	)	
v.	)	Judge Mark R. Hornak
	)	
FNU GUMBERT, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

**MEMORANDUM OPINION**

**Mark R. Hornak, United States District Judge,**

This case was commenced on September 20, 2016, and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges.

Presently pending is Defendants' Motion to Dismiss (ECF No. 15). The motion seeks to have the Complaint dismissed in its entirety based on Plaintiff's failure to exhaust his administrative remedies. Because Defendants presented material outside of the complaint, Magistrate Judge Eddy converted the motion to dismiss into a motion for summary judgment on the issue of exhaustion, and allowed the parties time to submit additional briefing and evidence. Plaintiff filed a response and brief in opposition to the motion. (ECF Nos. 21 and 24).

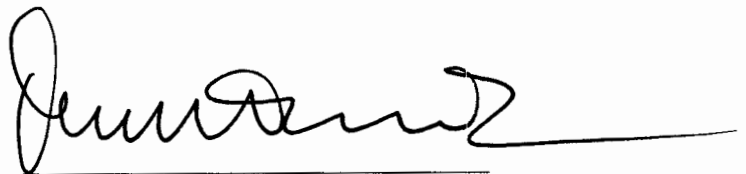
On January 24, 2018, Magistrate Judge Eddy filed a Report and Recommendation (ECF No. 30) recommending that the motion be granted in part and denied in part. Plaintiff was served

with the Report and Recommendation at his listed address and was advised that he had until February 12, 2018, to file written objections to the Report and Recommendation. To date, Plaintiff has not filed any objections nor has he sought an extension of time in which to do so.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the Court is in agreement with the conclusion of the Report and Recommendation and finds that the motion should be granted based on Plaintiff's failure to exhaust his administrative remedies with respect to the following claims: (i) that he was sexually assaulted /harassed by Defendant C/O Carter on April 5, 2015 (Claim Three of the Complaint); and (ii) all claims against Defendant Shawley and Jane Doe(s), R.Ns.

Further, the Court is in agreement with the Report and Recommendation and finds that the motion should be denied without prejudice as there is a material issue of fact as to whether Plaintiff was impeded in his efforts to exhaust his grievances pertaining to allegations against C/O Gumbert and C/O Elynoff regarding events which occurred on February 18, 2015, and the allegations against C/O Gumbert and C/O Carter regarding events which occurred on February 21, 2015.

An appropriate order will be entered.



Mark R. Hornak  
United States District Judge

cc: Plaintiff (by U.S. Mail)  
All counsel of record

Dated: February 26, 2018